IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.427 of 2006

Decided on: October 12, 2006

Ravi Walia **.....Appellant.**

VERSUS

Nischint Katoch **.....Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Vinod Thakur, Advocate.

For the respondent : Nemo.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent-plaintiff filed a suit against the appellant-defendant for possession of two shops with verandah and also for arrears of rent. The premises are situated in rural area and, hence, H.P. Urban Rent Control Act is not applicable. Before filing the suit a notice, under Section 106 of the Transfer of Property Act, was served on the appellant. It was stated that the shops had been released to the appellant for a period of 11 months from 1.9.1999, by means of a writing, on monthly rent of Rs.1800/- and it was agreed that in case the premises were not vacated on the expiry of the aforesaid period, the rent at the rate of Rs.2500/- per month would be payable, which would be further increased by 10% every year. The defendant is alleged to have not vacated the premises on the expiry of the aforesaid period and not

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Whether the reporters of the local papers may be allowed to see the judgment?

paid the rent and also committed breach of some conditions of the lease.

3. Appellant-defendant contested the suit. He pleaded that he had paid the rent upto the date of the filing of the suit and, hence, he was not liable to be evicted. It was denied that notice, terminating the tenancy, had been served.

4. Trial Court framed various issues based on the pleadings of the parties and tried the suit and ultimately decreed it. Decree for possession by way of ejectment was passed inn favour of the respondent-plaintiff and against the appellant-defendant. Also, a decree for Rs.32,400/-, on account of arrears of rent from 1.12.2001 to 31.5.2003, was passed. Appellant-defendant went in appeal to the Court of District Judge. Affirming the findings and decree of the trial court, the first Appellate Court dismissed the appeal.

5. Appellant-defendant's grievance is that when a fresh lease had been executed in April, 2001 and he continued in possession after the period of lease, fixed in the agreement of April, 2001, he became a tenant by holding over and, therefore, he could not have been ordered to be ejected.

6. I have heard the learned counsel.

7. There is no merit in the submission made by the learned counsel that the tenant was not liable to be ejected, on account of his having continued in possession of the shops even after the expiry of the period of lease, mentioned in document dated 25.4.2001. The learned counsel is possessed of a copy of the document, dated 25.4.2001. He read it out on the asking of the Court. As per this

document, the lease was granted only for 8 months, or say upto December, 2001. According to the findings of the two Courts below, appellant did not pay rent after December, 2001 and, therefore, he cannot claim that he has become tenant by holding over, under Section 116 of the Transfer of Property Act, 1982, because it is one of the conditions of Section 116 of the aforesaid Act that the leaser should accept the rent for the period subsequent to the period fixed by the lease deed. In the present case, the appellant, as per the findings of the two Courts below, has not paid rent after December, 2001 and so he cannot claim that he is a tenant by holding over. In any case, a notice Ex. PW-1/A, under Section 106, was served upon the appellant on 29.5.2003 against postal receipt Ex. PW-1/B, calling upon him to vacate the premises by 30.6.2003. The suit was filed after the expiry of the notice period. No defect has been pointed out in the notice.

8. In view of the above discussion, I find no merit in the appeal. In any case, no substantial question of law arises and, therefore, the appeal is liable to be dismissed.

9. Dismissed.

CMPs No.808 & 809 of 2006

Infructuous.

October 12, 2006(sd) **(Surjit Singh), J.**